

October 6, 2014

William D. McMinn  
Deputy General Counsel  
3165 Pacific Highway  
P O Box 120488  
San Diego CA 92112-0488

Re: Your Request for Advice  
**Our File No. A-14-171**

Dear Mr. McMinn:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and our advice is based solely on the provisions of the Act.

### **QUESTION**

Are payments for travel, lodging and subsistence made to Commissioner Rafael Castellanos relating to his trip to Israel for the *Educational Seminar in Israel for Southern Pacific Latino Leaders* (“Seminar”) subject to reporting and gift limits?<sup>2</sup>

### **CONCLUSION**

Payments for Commissioner Castellanos’ travel, lodging and subsistence are reportable gifts, not subject to gift limits because they are in connection with a legislative or governmental purpose and/or concern international public policy, and are provided by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> All of the answers to your specific questions in the advice request should be covered by the information provided in the analysis below.

## **FACTS**

You are a Deputy General Counsel for the San Diego Unified Port District (“District”), and are requesting advice on behalf of Commissioner Castellanos, who is a full reporter under the District’s conflict of interest code.

Commissioner Castellanos has been invited to participate in the upcoming Seminar in Israel for Southern Pacific Latino Leaders, which is sponsored by the American Israel Education Foundation (“AIEF”). Mr. Castellanos will depart on December 6, 2014 and return on December 14, 2014. Participants will include elected officials, civic leaders and political activists who seek to gain an in-depth understanding of modern Israel and the United States – Israel relationship.

AIEF, a non-profit 501(c)(3) organization, is the charitable organization affiliated with the American Israel Public Affairs Committee (AIPAC), and provides intensive educational symposia for religious, political and community leaders about the relationship between the United States and Israel. Established in 1990, AIEF has earned a reputation for producing informative and thought-provoking, fact-finding seminars in Israel. AIEF will cover major trip expenses, including transportation, lodging and meals during the program. Participants will be responsible for personal charges, such as telephone, internet service, gifts and activities not part of the formal program.

This intensive educational seminar will explore critical policy and security issues affecting both Israel and the United States. The program will include discussions with current and former Israeli government officials, Palestinians and leading academics and journalists. Through on-site visits or seminars, Commissioner Castellanos will have the opportunity to learn about innovative Israeli approaches to international and domestic issues. In addition, he will tour religious sites in Jerusalem and near the Sea of Galilee, and will participate in strategic surveys of Jerusalem and the Israeli borders with Lebanon, Syria and Gaza. The Commissioner will come away with a much deeper understanding of Israeli politics, society and culture. This is a very important time to visit as the United States and Israel confront growing uncertainty in the region, seek to find ways to advance the peace process and work together to prevent a nuclear Iran.

## **ANALYSIS**

### **Gifts, Generally**

A gift is defined under Section 82028(a) as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to Commissioner Castellanos.

Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on designated employees, such as Commissioner Castellanos, requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. (Sections 82030; 87302.)

Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e); Regulations 18700 & 18703.4.)

### **Gifts of Travel**

Under the Act and unless stated otherwise in Commission regulations not applicable here, any free travel is presumed to confer some personal benefit on a public official and is generally considered a gift unless the official provides equal or greater consideration in exchange for the travel. In addition, travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses to Israel paid by a third party will be considered a reportable gift to Commissioner Castellanos. (Section 82028; *Gault* Advice Letter, No. A-07-158.)

### **Gift of Travel - Exceptions**

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's current \$440 gift limit. In this regard, Section 89506(a) provides an exception from the gift limits for certain travel payments:

(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for

elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

To summarize, gifts of travel are generally reportable and subject to limits unless the travel falls under an exception. Relevant to the present situation is Section 89506(a)(2), which provides that travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are *not prohibited or limited* if they are provided by certain specified sources such as governmental agencies, bona fide public or private educational institutions, or non-profit 501(c)(3) organizations.

*1. Are the travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy?*

According to the facts, Commissioner Castellanos will travel to Israel with elected officials, civic leaders and political activists for the Seminar to seek an in-depth understanding of modern Israel and the United States – Israel relationship. The Seminar will focus on critical policy and security issues that impact both Israel and the United State, and will involve discussions with current and former Israeli government officials, Palestine Authority representatives and leading academics and journalists. In general, participants will acquire a better understanding of the politics, society and culture of Israel. It appears plain, therefore, that the trip to Israel is directly related to a legislative or governmental purpose and/or concerns international public policy.

*2. Are the travel expenses being provided by an entity described in Section 89506(a)(2)?*

According to the facts, payment for Commissioner Castellanos' trip expenses including lodging, transportation and meals will be covered by AIEF, which is a 501(c)(3) tax exempt organization. Therefore, the source of funding for his travel falls within the purview of Section 89506(a)(2).

Accordingly, payments provided by AIEF for Commissioner Castellanos' lodging, transportation and food related to his trip to Israel are reportable gifts that are not subject to gift limits pursuant to Section 89506(a)(2). Please note, however, that any payments made by third parties for items other than travel and related lodging and subsistence may be considered a reportable gift subject to the \$440 gift limit and the conflict of interest provisions of the Act, because those items would not be related to a legislative or governmental purpose or issues of international public policy.

### **The “Informational Material” Exception**

Regardless of the source, not all goods and services supplied to program participants are necessarily “gifts.” The Act excludes from its definition of “gift” items classed as “informational material,” a term that includes “any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks.” (Section 82028(b)(1); Regulation 18942.1.) “Informational material” may include “[b]ooks, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.” (Regulation 18942.1(a).) This does not, of course, include payments for travel, which would include costs of transportation, lodging or subsistence. (Section 82028(b)(1).) You have provided no facts relevant to this gift exception so we do not address it further.

### **Conflict of Interest Disqualification**

As mentioned, a public official who receives gift(s) of \$440 or more may have a financial conflict of interest under the Act. (Sections 87100, et seq.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within 12 months preceding the decision. Therefore, if Commissioner Castellanos accepts gifts from the source identified above valued at \$440 or more, he may be prohibited from participating in governmental decisions affecting that source. If this occurs, he should seek further assistance.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Jack Woodside  
Counsel, Legal Division

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